Effectiveness of Arbitration in Construction Projects in Palestine

مدى فعالية التحكيم في تقييم صناعة البناء والتشييد في فلسطين

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Abstract:

Arbitration is widely acknowledged as the prevailing and preferred method for resolving disputes within the construction industry. The objective of this study was to assess the effectiveness of arbitration within the Palestinian construction industry (PCI), with a particular focus on its procedural aspects, financial implications, and duration. Given the nature of this investigation, a questionnaire survey was utilized to collect data from the contractors, consultants, and arbitrators who were participants in the study. The researchers also conducted a comprehensive literature review encompassing scholarly journal articles and conference papers. The results of the study provide evidence that arbitration works well in the Palestinian construction sector (PCI). When compared to a written process, arbitration's shorter duration and lower cost make it a preferable choice for settling disputes. Arbitration is useful because of the trustworthiness and adaptability it is thought to offer. The fact that arbitration rulings may be easily enforced is another proof that their outcomes are recognized and followed. These results demonstrate the favorable influence of arbitration in the PCI, providing an efficient and reliable process for conflict resolution, while it is important to keep in mind that unique contextual circumstances should be taken into account. The discourse pertaining to the characteristics of conflicts within the Palestinian construction industry (PCI) was not adequately examined. This study aims to provide a significant contribution to the existing academic literature on arbitration in the Palestinian construction industry (PCI). The present finding has significant practical implications, indicating the recommendation to shift from a document-centric approach to one that integrates participatory methods.

Keywords: Arbitration, Construction, Cost, Procedure, Time, Palestine.

ملخص:

من المسلم به على نطاق واسع ان التحكيم يعتبر الأسلوب السائد والمفضل لحل النزاعات داخل صناعة البناء والتشييد. فكان الهدف من هذه الدراسة هو تقييم فعالية التحكيم في صناعة البناء والتشييد الفلسطينية، مع التركيز بشكل خاص على جوانبه الإجرائية، والآثار المالية، والمدة. نظرا لطبيعة هذا التحقيق، تم استخدام استبيان لجمع البيانات من المقاولين والاستشاريين والمحكمين الذين شاركوا في الدراسة. وأجرى الباحث أيضا مراجعة أدبية شاملة تشمل مقالات المجلات العلمية وأوراق المؤتمرات. وخلصت نتائج الدراسة الى أدلة على أن التحكيم يعمل بشكل جيد في قطاع البناء الفلسطيني. إضافة الى ذلك وبالمقارنة مع عملية مكتوبة، فان كون مدة التحكيم أقصر وأقل تكلفة جعل التحكيم الخيار الأفضل لتسوية المنازعات. ذلك لان التحكيم مفيد بسبب مقدار الجدارة والثقة والقدرة على التكيف التي يقدمها. أضف الى ذلك أن أحكام وقرارات التحكيم يمكن تنفيذها بسهولة وهو دليل آخر على أن نتائجها يتم الاعتراف بها واتباعها. تظهر هذه النتائج التأثير الإيجابي للتحكيم في اتحاد الصناعات الإنشائية الفلسطيني، مما يوفر عملية فعالة وموثوقة لحل النزاعات، في حين أنه من المهم أن يؤخذ في الاعتبار أنه يجب مراعاة الظروف السياقية الخاصة بكل حالة. من محددات هذه الدراسة انه لم يتم فحص الخطاب المتعلق بخصائص النزاعات داخل صناعة البناء الفلسطينية بشكل كاف الا ان هذه الدراسة على الاطلاق تهدف الى تقديم مساهمة كبيرة في الأدبيات الأكاديمية الحالية حول التحكيم في صناعة البناء الفلسطينية والنتيجة الحالية لها آثار عملية كبيرة، مما يوصي بالتحول من نهج يركز على الوثائق إلى نهج يدمج الأساليب التشاركية.

الكلمات المفتاحية: التحكيم، البناء، التكلفة، الإجراء، الوقت، فلسطين.

Introduction

Given the status of Palestine as a developing nation, it is evident that numerous projects and transactions are taking place within its borders. Through these endeavors and deals, the parties strive to further their own goals and objectives. Hence, the possibility of conflicts may arise due to disputes among the involved parties. Arbitration is a commonly employed mechanism for resolving such disputes. Arbitration is a privately conducted process designed to resolve disputes between two or more parties without resorting to the formal judicial system. Arbitration, as a general practice, offers numerous advantages to all parties involved in disputes. It is known to effectively reduce both the time and cost associated with resolving conflicts, while also providing a viable means to address international disputes. The recent expansion of arbitration in Palestine can be attributed to various factors, including certain conditions that facilitate its development. These conditions encompass the presence of a legal framework comprising contemporary legislation that governs arbitration procedures and court proceedings, the inclusion of arbitration terms in contracts, and the existence of arbitration institutions.

Palestine's economy and job market would suffer greatly if the construction industry were to collapse. Construction disputes are fairly common. It is clear that courts in Palestine play a minimal role in the arbitration of construction-related disputes. Consequently, arbitration emerges as a crucial quasi-judicial mechanism for resolving such disputes. Therefore, it is imperative to gain insight into the decision-making process employed by arbitrators. It is challenging to provide comprehensive remedies for every conceivable situation that may arise in construction projects. In a timely manner, disagreements can be resolved by discussion, negotiation, adjudication, arbitration, or litigation. However, the litigation process is characterized by lengthy durations and substantial expenses. According to Mishra (2020), there is a preference for expeditious and efficient approaches to resolving disputes. The efficacy of arbitration is assessed by evaluating the proportion of arbitration awards that are accepted. This study primarily examines the utilization of independent arbitration as a form of Alternative Dispute Resolution (ADR) in the context of construction contracts, a practice that is prevalent in contemporary times. Arbitration, as defined by Marshall (2001), refers to the conclusive resolution of disputes by a private tribunal, thereby highlighting its distinctiveness from other ADR methods.

Based on empirical research, it has been observed that arbitration has undergone a significant increase in judicialization, both in terms of its procedural aspects and the resulting outcomes. In fact, scholarly works by Stipanowich (2010) and Torgbor (2013) have highlighted this trend, which is noteworthy considering that arbitration was originally designed to address the deficiencies of litigation. According to Torgbor (2013), the presence of unnecessary frustration, uncertainty, delay, and expense has been identified as a consequence, subsequently affecting the desirability of this approach to settling legal disagreements (Stipanowich & Lamare, 2014). As a result, different dispute resolution processes like mediation, conflict review boards, and adjudication have emerged in recent years as appealing substitutes to arbitration (Hinchey, 2012; Stipanowich, 2010). Some contractual provisions have been altered to make litigation the primary or fallback mechanism for resolving construction disputes (Hinchey, 2012), or to institute tiered alternatives to arbitration. There may be regional variations in how these indicators portray construction arbitration's success. Despite the aforementioned variations, it is widely acknowledged in the majority of studies (Abwunza et al., 2020; Marques, 2018; Moza & Paul, 2017) that construction arbitration exhibits a lack of effectiveness. Several studies in the field have been categorized as exploratory or descriptive in nature (Besaiso et al., 2018; Moza & Paul, 2017). Conversely, certain investigations have focused on individual cases within diverse geographical contexts (Marques, 2018). Several academic studies have examined the reasons behind the perceived ineffectiveness of construction arbitration. For instance, Abwunza (2020) explored the role of unfair outcomes, while Abwunza et al. (2020) investigated the influence of control-related factors. Independent measures of construction arbitration's success, such as cooperation and punctuality, were the primary focus of these investigations.

The initial step involves providing readers with an introduction to the concept of arbitral effectiveness. Subsequently, an examination of pertinent literature pertaining to the effectiveness of construction arbitration is conducted. Following this, an exploration of potential theories, models, and factors that may elucidate the observed performance is undertaken. The literature review section has formulated propositions to establish the relationships between arbitral effectiveness, its influencing factors, and the interconnections among these factors. Through our thorough examination of the existing literature, we have identified and delineated research gaps that have emerged over time.

Literature Review:

Effectiveness of Construction Arbitration

The efficacy of a conflict resolution technique is a multifaceted concept encompassing its financial implications, temporal considerations, and caliber of the resulting resolution. Both objective and subjective metrics can be used to assess these factors. Cost and time are objective measures if they refer to the actual expenses incurred by the parties or the time it took to resolve the dispute, while time and cost are subjective measures if they are compared to an expected standard. For instance, scholarly research has indicated that the recommended timeframes for the completion of arbitrations differ depending on whether they are conducted by a sole arbitrator or a multi-member tribunal. Specifically, it has been suggested that arbitrations presided over by a sole arbitrator should ideally be concluded within a period of three months, whereas those conducted by multi-member tribunals should aim to be completed within a timeframe of six months (Fortese & Hemmi, 2015; Rivkin & Rowe, 2015). According to previous studies (Besaiso et al., 2018), arbitration is more expensive and takes more time than litigation and other conflict resolution techniques. Cost-effectiveness and time-efficiency can be used to characterize the costs and length of time required to resolve an issue, respectively, when both objective and subjective measures are included. Measures of objectivity in arbitration center on the form of the judgment as expressed in statutory instruments, while measures of subjectivity center on the cooperative behavior of the disputants. The willingness to use arbitration to resolve future disagreements (Gross & Black, 2008), the desire to retain relationships (Besaiso et al., 2018), and the appraisal of the awards' acceptability are all subjective variables.

Historical Overview of Development of Arbitration in Ancient Palestine (Before Twentieth Century)

The concept of arbitration as a means of resolving conflicts has ancient roots in Arab thought. Arab culture has a long-standing precedent of referring disputes to an impartial third party for resolution or decision-making, regardless of the nature of the conflict at hand. Historically, parties would choose an arbitrator, or hakam, if they were unable to resolve their issue through negotiation (Fakih, 2011). All that was required of the arbiter was respect in the community, a good name, membership in a powerful tribe, and a healthy dose of common sense and logic. Since there were no courts available to enforce arbitration awards, parties had to use property as collateral to guarantee that the decision would be honored.

It was also highly improbable that the losing side would appeal the arbitrator's decision due to his high social standing (Gemmell, 2007). Due to the lack of a developed judicial system in early Islamic societies, arbitration emerged as the preferred means of settling legal disputes. The arbitration process was formalized by Islam's legitimization, reform, and regulation (Fakih, 2011). The reform addressed fundamental conceptual questions such as whether or not a dispute can be arbitrated, whether or not an arbitration agreement is enforceable, whether or not an arbitral judgment is final and binding, what form an arbitral award must have, and which law applies to arbitration proceedings. Moreover, it dealt with matters of procedure, such as the removal of an arbitrator once the procedures had begun.

Due to the ongoing disagreements around the whole idea of arbitration, no one can agree on whether or not an arbitration agreement is legally binding. The validity and enforceability of an arbitration agreement have been the subject of debate amongst academics. Some have stated that such an agreement is legal and enforceable, while others have suggested that it is valid but not binding because either side can cancel it at any time. Future versus existing disputes became a significant dividing line in the debate about its legality. Some writers have contended that a submission agreement (which is different from an arbitration provision) is the sole appropriate type of arbitration in light of Islamic philosophical principles. The apparent reasoning for this is that an arbitration clause would be null and void in the absence of a dispute because of the Islamic legal concept known as "*gharar*" which invalidates any provision based on ambiguity. In addition, a considerable time may pass between the signing of the agreement and the emergence of a dispute. In the meantime, however, either party may lose interest in the arbitration process while being required to do so by law. The other party may then try to sabotage the arbitration process and the enforcement of the ruling, which would serve neither of their interests. However, Al-Qurashi (2004) disagreed with Rashid's conclusion, arguing that arbitration agreements are permissible so long as they do not permit any behavior that is prohibited by Islamic law. The intellectual debate continued through the first century and into the twentieth. The expanding commercial activity of the nineteenth century brought about novel judicial challenges in the resolution of commercial disputes. The Ottoman court was understandably distraught by this news, given the Caliphate was the last Islamic Caliphate and had ruled Palestine from 1517 until 1917. Laws governing contracts were scattered, and there was no unified Islamic civil code, all of which contributed to the anarchy. According to

(Terris and Inoue-Terris, 2002), despite Islamic law's role in laying the groundwork for the Ottoman Caliphate's legal system, this occurred. The first attempts at codifying Islamic law, influenced by the French civil code, were made during the time of the Ottoman Empire. The codification process resulted in the Ottoman Civil Code, Majallat Al-Ahkam Al-Adliya (Khadduri and Liebesny 2008). From the looks of things, the "general principles of Islamic contract law" (Bunni 1997) were disseminated thanks to this codification. Arbitration was given its own chapter (1841–1851) in AlMajallah. Disputes' arbitrability, an award's validity and enforceability, an award's creation and removal, its timing, and the tribunal's authority to mediate a dispute (*al-sulh*) were all covered in these articles.

In Article 1850, Al-Majallah introduced an “original institution of Arbitration by Conciliation” (Palmer 2005):

When the parties have given their consent, arbitrators chosen in accordance with the law have the authority to settle any disputes between them. Therefore, the parties cannot reject a settlement reached by the arbitrators if they have delegated reconciliation authority to one of the arbitrators in line with the provisions set forth in the Book of Settlements [Aqd Al Sulh].

This method is similar to med-arb, a combination of mediation and arbitration developed in the 21st century (Palmer, 2005). According to Article 1531 of Al-Majallah, a contract resolving a disagreement through offer and acceptance is considered an al-sulh. Islam strongly endorses the use of al-sulh as a means of conflict resolution. It can be seen as a term for the peaceful resolution of disagreements using methods including mediation, conciliation, and supported negotiation (Rashid, 2004). Although not an exact equivalent, mediation and conciliation in the modern sense are conceptually comparable to al-sulh (Palmer 2005). According to Rashid (2008), the centuries-long argument over the legality of arbitration clauses was finally put to rest by Al-Majallah, since Articles 1847–1850 state that an arbitration agreement is permissible if it is agreed upon after a dispute has arisen. The writers contend that Al-Majallah is quiet on this question and hence rejects this view. Authors argue that recent arbitration laws in Arab countries, including Palestine that allow arbitration provisions, put an end to this controversy.

Recent Development of Arbitration in Modern Palestine (After Twentieth Century)

After the dissolution of the Ottoman Caliphate, and subsequent to the British Mandate over Palestine in 1917, the legislative enactment known as the 1926 Arbitration Ordinance was officially promulgated. Similar to the Arbitration Act passed in England in 1889. In 1965, Palestine signed the Geneva Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and in 1923, it signed the Geneva Protocol on Arbitration, both of which were developed during the time Palestine was a British colony. Following this, the Arbitration Procedures Act of 1935 and the Foreign Arbitration Awards Act of 1930 came into effect. According to 2015 research by Katbeh, the West Bank and all of Palestine are now bound by the Arbitration Law of 1953 and the Enforcement of Foreign Provisions Act of 1952. In addition, the Arbitration Act No. 3 was influenced by Davis et al. (2005). The reform discussed in the aforementioned source (Katbeh, 2015) constituted a significant endeavor aimed at modernizing, unifying, and harmonizing the practice of arbitration in Palestine. The enactment of this legislation effectively resolved the longstanding dispute regarding the legitimacy of arbitration provisions. In accordance with established international norms, these considerations are deemed to be valid. Moreover, it can be observed that Article (36) of the Palestinian Arbitration Act of 2000 reflects an apparent continuation of the enduring Islamic legal tradition, as exemplified in Al-Hedaya and Article 1850 of Al-Majallah.

This particular article stipulates that, in a dispute, one of the parties has the ability to grant the tribunal the authority to engage in al-sulh (reconciliation) procedures, guided by principles of equity and justice. As per the article, the tribunal possesses the jurisdiction to suggest a resolution that is mutually acceptable to the parties involved, either upon the request of any of the aforementioned parties or at its own discretion. Furthermore, it is noteworthy that the Arbitration Act of 2000 recognizes several fundamental principles, including the doctrine of reparability, the principle of competence-competence, and the parties' autonomy to establish their own arbitral tribunal and determine the governing laws. This alignment with prevailing international standards is particularly evident in arbitration acts that have been influenced by The United Nation Commission on International Trade Low (UNCITRAL) Model Law. This is something that is not unique to the United States. Furthermore, it clearly outlines the obligations of state courts, the grounds on which arbitral awards can

be challenged, and related issues. Nevertheless, due to specific inadequacies in the aforementioned legislation, combined with recent progressions in the realm of international arbitration, there exists an urgent demand for a fresh reform. The author of this paper was cognizant of the ongoing endeavors to formulate a novel arbitration Act that would encompass the latest practices observed in the Model Law and the New York Convention of 1958 pertaining to the recognition, enforcement, and recognition of foreign arbitral awards. According to Katbeh (2015), the main objective of the proposed modifications is to update the definition of an arbitration agreement and the fundamental principles governing the establishment of an arbitral tribunal.

Furthermore, the objective of these modifications is to minimize the level of judicial interference in the arbitration procedure. It is important to highlight that the State of Palestine officially ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2015 (Guide to the 1958 New York Convention, 2015). The implementation of this measure represents a noteworthy advancement in the promotion of international arbitration and the establishment of a contemporary framework that conforms to global standards concerning the recognition and enforcement of arbitral awards by international organizations. The aforementioned modifications signify a significant advancement in promoting the development of global arbitration and establishing a revised framework that aligns with international norms, consequently diminishing the necessity for judicial interference in the arbitration proceedings.

Outline of the Procedure in Arbitration Proceedings

The enactment of Law NO. 3 of the year 2000, known as the Palestinian Arbitration Law, assumes a crucial function in facilitating the resolution of disputes both domestically within Palestine and in the context of international commercial affairs. The legal framework encompasses a wide range of facets pertaining to arbitration, encompassing the delineation of fundamental concepts to the establishment of the prerequisites for inclusion within the roster of authorized arbitrators.

Definitions and General Provisions

The foundational framework for the entire statute is established in Chapter 1 of the Palestinian Arbitration Law. The initial step involves establishing precise definitions for key terms and phrases that are commonly employed within the

legal domain. The key terms encompassed in this discussion are "The Law," which specifically pertains to the Arbitration Law number 3 of 2000, "The Ministry," which denotes the Ministry of Justice, and "The Minister," which designates the individual holding the position of Minister of Justice.

The subsequent chapter provides a distinction among different categories of arbitration, including National Arbitration, International Arbitration, Foreign Arbitration, Private Arbitration, and Institutional Arbitration. Furthermore, the document delineates the prerequisites for assuming the role of an arbitrator, which encompass being a human being, possessing legal capacity, and lacking any criminal convictions or conflicts of interest pertaining to the subject matter at hand.

List of Arbitrators

Chapter 2 of this study centers on the establishment of a dedicated department that assumes the responsibility of managing the applications for inclusion on the list of arbitrators. The chapter provides an overview of the application process, delineates the prerequisites for prospective applicants, and elucidates the financial obligations entailed in being included on the list.

The prerequisites for attaining accreditation as an arbitrator encompass the fulfillment of legal proficiency, adherence to ethical conduct, and establishment of a reputable standing. In order to be considered for admission, prospective candidates are required to successfully complete an examination that has been designated by the Ministry, unless they are granted an exemption on the basis of their specific educational and experiential qualifications.

The Arbitration Agreement

Chapter 3 of the study focuses on the arbitration agreement, which is required to be in written form and duly signed by all parties participating in the process. This statement elaborates on the acceptability of electronic communication as written proof of a contractual agreement. The chapter also examines the enforceability of the arbitration agreement, its autonomy from the underlying contract, and the continued validity of the agreement in the event of a party's death or legal incapacity.

The Arbitration Panel

Chapter 4 explores the composition of the arbitration panel, which has the potential to consist of one or multiple arbitrators, as mutually determined by the

involved parties. The text further examines the nomination process for arbitrators and umpires, emphasizing the significance of ensuring an uneven number of arbitrators to ensure the potential for achieving majority decisions.

The chapter emphasizes the significance of the independence and impartiality of arbitrators, necessitating their disclosure of any circumstances that may give rise to concerns. Parties possess the prerogative to petition for the recusal of an arbitrator in the event that they can substantiate legitimate grounds for such a request.

The Arbitration Proceedings

Chapter 5 of the present study provides an in-depth analysis of the arbitration proceedings, with a particular focus on the paramount importance of maintaining confidentiality and the significant authority vested in the arbitration tribunal to ensure the equitable and efficient conduct of said proceedings. The chapter provides an overview of important elements, including pleadings, evidence, language used in arbitration, and the relevant legal framework.

The Arbitral Award

Chapter 6 of the present study centers on the examination of the arbitral award, encompassing its structure, format, and substantive elements. The document in question pertains to the conclusiveness and enforceability of the arbitration decision and delineates the prerequisites for its issuance, which include the stipulation that a majority decision must be reached by the panel of arbitrators.

Recourse against the Arbitral Award

Chapter 7 of the study examines the various remedies that are accessible to the parties involved in the event of contestations arising in relation to the arbitral award. The document delineates the justifications for nullifying the award, encompassing the lack of validity in the arbitration agreement or the presence of procedural irregularities. The chapter additionally addresses the temporal constraint associated with the submission of an application to vacate the award.

Recognition and Enforcement of Foreign Arbitral Awards

Chapter 8 of the present study pertains to the intricate matter of acknowledging and implementing foreign arbitral awards within the jurisdiction of Palestine. The aforementioned statement establishes the fundamental concept

of reciprocity and emphasizes the specific circumstances in which a foreign award can be acknowledged and implemented.

In Palestine, construction arbitration proceedings generally adhere to a systematic procedure aimed at resolving disputes that arise from construction contracts. The primary phases of a typical arbitration hearing for a construction dispute in Palestine are outlined below.

- **Pre-Arbitration Stage**:

The initial step involves a thorough examination of the construction contract by the involved parties, with the specific aim of identifying the dispute resolution clause. It is commonly observed that this clause typically designates arbitration as the preferred mechanism for resolving any potential disputes.

The party seeking to have the issue resolved through arbitration (the "Claimant") must first provide the other party (the "Respondent") with a formal notice of disagreement that specifies the nature of the dispute and the remedies sought. The contractual agreement may stipulate a specific duration of notice or a prescribed procedure that must be adhered to.

- **Appointment of Arbitrators:**

The selection of arbitrators by each party is a customary practice, typically carried out within a designated timeframe as stipulated in the arbitration agreement or the applicable rules.

The appointment of a presiding arbitrator is possible when the two party-appointed arbitrators mutually agree to do so. In the event of a failure to reach a consensus, the selection of an arbitrator may be delegated to either an arbitration institution or a duly authorized entity, in accordance with the mutually agreed-upon regulations.

- **Arbitration Agreement and Rules:**

The parties involved in the dispute mutually consent to adhere to a set of arbitration rules, such as those established by UNCITRAL, ICC, or domestic arbitration bodies, to govern the conduct of the arbitration proceedings.

In addition, they also determine the designated location for arbitration, commonly referred to as the seat of arbitration, as well as the language or languages to be used during the arbitration proceedings.

- **Preliminary Procedural Stage:**

The jurisdiction of the arbitral tribunal is assessed by the tribunal itself, which includes an examination of its own jurisdiction as well as the legality of the agreement for arbitration.

The procedural timetable is established by the tribunal in collaboration with the involved parties, outlining the schedule for submissions, hearings, and significant milestones.

- **Exchange of Statements and Evidence:**

Submission of Claim: The Claimant presents its formal statement of claim, which encompasses the factual background, legal assertions, and desired remedies.

Defense Statement: The Respondent hereby presents its defense statement in reply to the assertions put forth by the Claimant.

Evidence Exchange: The involved parties engage in the exchange of pertinent documents and evidence that substantiate their respective stances.

- **Hearings and Proceedings:**

Oral Hearings: The tribunal for arbitration convenes oral hearings during which the involved parties are afforded the opportunity to present their arguments, cross-examine witnesses, and address inquiries posed by the tribunal.

Each side may submit their own expert witness or expert report to the court for consideration.

Interim Measures: The tribunal has the authority to issue interim measures in order to safeguard the rights of the parties until the final award is rendered.

- **Award and Costs:**

The arbitration award is the final decision rendered by the arbitral tribunal after careful consideration of the arguments and evidence presented. It encompasses the tribunal's resolution of the dispute and the relief that is granted.

Cost Allocation: The tribunal possesses the authority to determine the manner in which the expenses associated with the arbitration process, encompassing the fees and expenditures of the tribunal, shall be distributed among the involved parties.

- **Enforcement of the Award:**

Recognition and Enforcement: Following the issuance of the award, either party has the option to pursue the recognition and enforcement of said award within the suitable court of Palestine.

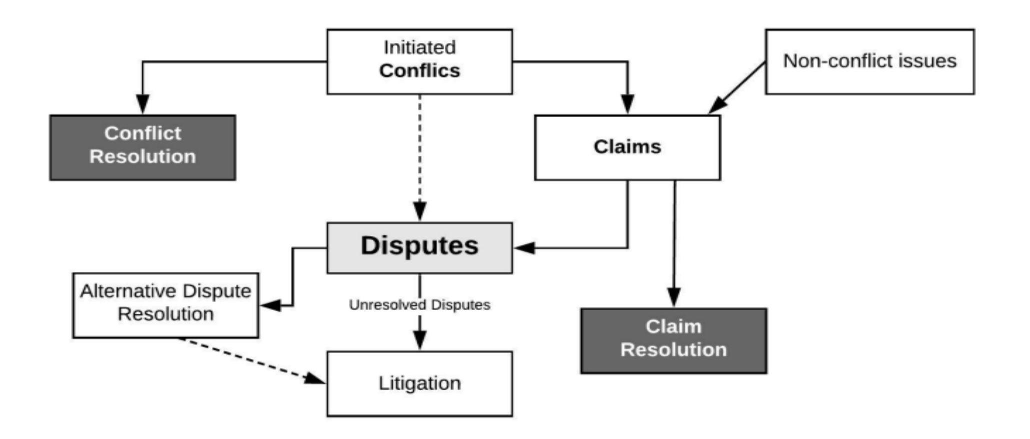


Figure 1 Conflicts, claims, and disputes (adapted from (A. Al-Keim, 2017).

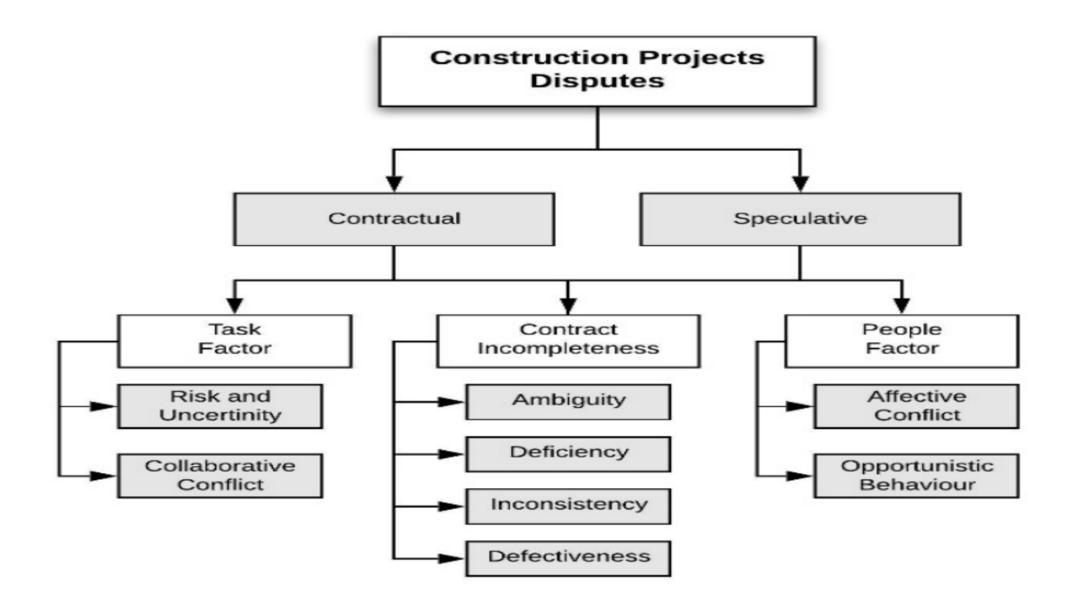


Figure 2 Conflicts, claims, and disputes M. Kumaraswamy (1997)

Methodology

A non-experimental research methodology was employed. The methodology involves a researcher commencing with the examination of effects or outcomes and endeavoring to establish their causal relationship (Kumar, 2011). In this study, an exploratory research methodology was chosen due to its ability to diagnose a given situation and explore potential alternatives (Naoum, 2007). This

study was deemed suitable for examining the efficacy of arbitration as a means of resolving disputes within the PCI.

The data collection methods employed in this study consisted of a comprehensive literature review and the administration of a self-administered questionnaire survey. The adoption of the questionnaire was motivated by its cost-effectiveness, ability to gather extensive data within a short timeframe, and provision of enhanced anonymity, as highlighted by Kumar (2011) and Grey (2009). The questionnaire consisted of a combination of open-ended and closed-ended questions. The utilization of this method was motivated by the requirement to gather precise and particular data. The participants in the study consisted of a total of 91 individuals, comprising 15 arbitrators, 32 contractors, and 44 consultants. Participants in construction arbitration processes were asked to take part in this study, and that included arbitrators, contractors, and consultants. In this investigation, a non-probability sampling strategy known as "convenience sampling" was used. This approach was chosen based on the recommendations of Biggam (2008) and Kumar (2011). Convenient sampling was deemed appropriate as it facilitates the collection of comprehensive insights and ideas from individuals with expertise in the research field. Moreover, the literature has identified research variables as phenomena that exhibit potential changes when their relationship is taken into consideration (Naoum, 2007; Kumar, 2011). The research study utilized arbitration as the independent variable, while time, cost, and procedure were considered as intervening variables. The dependent variable of interest was the effectiveness of arbitration in resolving conflicts. The purpose of this study was to conduct a comprehensive analysis of the efficacy of arbitration in terms of procedural efficiency, time management, and cost-effectiveness.

Results and Discussion

- **EAC arbitration costs:**

Costs associated with EAC arbitration were seen as prohibitive by respondents. However, if you compare the expenses of arbitration in the EAC to those in other centers, you'll find that EAC arbitration is more affordable. As a result, according to what has been discussed in conversations with arbitration professionals, the EAC's arbitration expenses are generally approved.

Table 1 EAC arbitration costs

No.	Question	Mean	relative important index	rank
1	arbitration request cost	3.26	0.65	3
2	Arbitration and administrative fees	3.38	0.68	1
3	Lawyer fees	3.35	0.67	2

According to Table 2, respondents found the length of time required to complete EAC arbitration proceedings to be around average. Arbitration's ability to resolve disputes rapidly is one of its primary benefits. In order to keep the duration of an EAC arbitration to a minimum, it is recommended that the time restrictions of arbitration be set in advance (as decided in the EAC arbitration agreement form).

Table 2 Time period of the EAC arbitration procedures

No.	**Question**	Percent (long)
1	Time of administrative procedures (prior hearings).	52.9
2	Total time of hearings.	55.8
3	Time for issuing arbitration decision	47

- **Causes of Delay in the Arbitration Procedures:**

As depicted in Table 3 of the provided data. The participants concur that the primary factors contributing to delays in arbitration proceedings include the involvement of witnesses and the complexity of evidence. Additionally, delays may arise due to factors associated with the claimant or defendant, the nature of

the issue being, arbitrated and administrative issues pertaining to prior hearing sessions.

Table 3 Causes of delay in the arbitration procedures

No	Question	Mean	Rank
1	Complexity of procedures	3.12	5
2	Arbitrators (hearing sessions administration)	3.00	6
3	administrative problems (prior hearing sessions)	3.50	4
4	Reasons related to claimant or defendant	4.06	2
5	Witnesses and complex evidences	4.09	1
6	Type of problem being arbitrated	4.00	3

The data presented in Table (4) indicates that a significant majority of the respondents, specifically 91.2%, expressed their intention to reassess the use of EAC (Electronic Alternative Dispute Resolution) as a method for resolving disputes in the future. The high percentage observed in this context signifies a notable level of satisfaction with the EAC arbitration procedures. This finding indicates a significant degree of acceptance regarding the arbitration procedures of the East African Community (EAC). The rapid attainment of a significant level of acceptance within a short period of service is indicative of the exceptional professionalism exhibited by the EAC.

Table 4 Reconsidering EAC for Future Dispute Resolution

Would you use arbitration in EAC as a dispute resolution method again	Frequency	Percentage
Yes	31	91.2
No	3	8.8
Total	34	100.0

Research results indicates that EAC succeeded in attracting disputants who satisfied EAC procedures. EAC achieved very good acceptance of disputants, as arbitration advantages are achieved in EAC procedures. EAC arbitrators are

technically and legally professional. They have high administrative abilities, fairness, and neutrality. Cooperation with the bar association will promote legal expertise of arbitrators. The cost and time period of EAC arbitration are effective. That is because of EAC arbitrator expertise which minimizes periods of revising documents and deciding awards. EAC succeeded in a few years of service in achieving high gratifying arbitration procedures and a high level of acceptance. This level of acceptance appeared when 91% of respondents agreed to reconsider EAC again in resolving disputes.

The study's findings highlight several positive aspects of arbitration, including its relatively short duration, cost-effectiveness, and perceived advantages compared to a documentary process. Furthermore, the enforcement of arbitration awards is described as a less time-consuming endeavor.

These findings indicate that arbitration is a favorable method for resolving disputes within the PCI. The short duration of arbitration means that disputes can be resolved efficiently, saving time for all parties involved. The cost-effectiveness of arbitration implies that it can be a more affordable option compared to other dispute resolution methods, potentially benefiting businesses operating in the Palestinian construction industry.

The perceived advantages of the arbitration process, as mentioned in the study, likely contribute to its effectiveness within the PCI. These advantages could include factors such as confidentiality, flexibility in selecting arbitrators, and the ability to choose a neutral venue. Such features may enhance the parties' confidence in the arbitration process and increase their willingness to utilize it for dispute resolution.

Additionally, the study highlights the ease of enforcing arbitration awards, suggesting that the outcomes of arbitration are generally respected and complied with by the parties involved. This is a crucial factor in any dispute resolution mechanism, as the effectiveness of a decision relies on its enforceability.

However, it is important to note that the effectiveness of arbitration in the Palestinian construction industry, as described in the study, may be subject to specific contextual factors. The unique characteristics of the PCI, such as local laws, cultural considerations, and industry practices, can influence the success of arbitration as a dispute resolution method. Therefore, while the study's findings indicate the effectiveness of arbitration in the PCI, it is essential to consider the

broader context and consult other sources of information to form a comprehensive understanding.

Conclusion

This paper provides a valuable and relevant contribution to the existing body of knowledge, particularly in light of the growing attention towards construction arbitration in Palestine. The evidence indicates that the practice of arbitration has been employed in Palestine for an extended period. The emergence of the phenomenon was not solely attributable to the enactment of contemporary arbitration legislation in the year 2000. This paper examines the significant transformations that have led to the increased prevalence of practices that were once infrequent, the establishment of systems that were previously improvised, and the implementation of procedures that were once lacking in structure. Since the year 2000, there has been a notable enhancement in the infrastructure of construction arbitration. This encompasses the implementation of legislative reforms, such as the Arbitration Act No. (3) of 2000 and the Civil and Commercial Procedure Act (2) of 2001, as well as the establishment of novel arbitration institutions and the rise of proficient construction arbitrators. Never the less; certain obstacles continue to impede the realization of arbitration's complete efficacy. Despite significant advancements in the legal framework, the current duration it takes for a court to validate or nullify an arbitral award remains sufficiently lengthy to undermine the fundamental objective of arbitration, which is to offer expeditious resolution of disputes. Furthermore, the high expenses associated with arbitration can likely be attributed to the opportunistic behavior of the parties involved, who tend to greatly exaggerate their claims and counterclaims. Additionally, arbitration institutions contribute to this issue by determining arbitration fees based on the total amount in dispute, which often leads to inflated costs. Moreover, arbitrators' failure to exercise their discretion in awarding costs, which is intended to discourage opportunistic behavior and thereby reduce arbitration expenses, further exacerbates the problem. The issue at hand pertains to the problematic nature of certain international organizations' hesitancy to engage in arbitration proceedings that are based in Palestine. In order to effectively achieve their development objectives, individuals must fulfill their obligation to enhance accessibility to the legal system and promote the efficacy of arbitration mechanisms for domestic contractors.

The upcoming arbitration statute and Palestine's 2015 adoption of the New York Convention both bode well for the country's bid to become an acceptable

arbitration seat for international organizations. The parties to a contract can rest easy knowing that arbitral awards will be recognized and enforced by Palestinian courts because Palestine has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The proposed changes to the Arbitration Act aim to create a climate more amenable to arbitration by increasing the distance between the arbitration procedure and national courts. If these issues persist, it is possible that construction arbitration could experience a downturn. Users may raise concerns about the continued worth of arbitration if it not only incurs higher costs but also entails a significant time lapse from the initiation of arbitration proceedings to the enforcement of arbitration awards. The primary objective of arbitration is to offer a cost-effective and expeditious means of resolving conflicts. While cost may be a factor influencing the parties' level of tolerance, as long as it remains within their budgetary limits, their tolerance towards time constraints may not be as lenient. However, when considering all factors, it appears that arbitration will continue to be a prominent method of resolving disputes. The reason for this is not due to the absence of limitations in arbitration, but rather the lack of genuine competition from alternative mechanisms for resolving disputes. Despite the perception that court litigation is a challenging course of action, the process of adjudication is often overlooked and rarely utilized. Mediation or conciliation presents numerous sociocultural challenges as well. Hence, it is anticipated that the domain of construction arbitration will continue to expand.

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